KELLER AND HECKMAN LLP
Serving Business through Law and Science®

1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Gregory A. Clark
(202) 434-4302
ClarkG@khlaw.com

October 21, 2013

Via FOIAonline

FOIA Coordinator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: FOIA Request for TSCA Information, PMNs P-98-315, P-98-316, P-98-317, and P-90-318

Dear Sir or Madam:

Pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. § 552), and the U.S. Environmental Protection Agency's (EPA) freedom of information regulations, I am writing to request the technical reports underlying the concentration of concern (COC) assessments and engineering assessments related to EPA's review of Premanufacture Notices (PMNs) P-98-315 through P-98-318 and the related Significant New Use Rule promulgated on January 5, 2000, for these substances.[1] More specifically, we are requesting the following:

- EPA's engineering reports;
- the Structure Activity Report;
- any "ECOSAR" analyses;
- any non-confidential correspondence between EPA and the PMN submitter; and
- any other internal EPA memoranda underlying EPA's review of these PMNs and decision to promulgate this SNUR.

We are not requesting the PMN in question or the toxicity studies submitted with the PMN, as these documents have already been obtained.

[1] 65 Fed. Reg. 354 (Jan. 5, 2000).

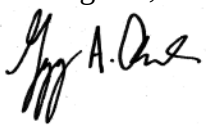
Note that we are aware that EPA has sometimes taken the position that it prefers not to release certain documents prepared in the evaluation of new chemical substances under TSCA. We believe that the only possible statutory basis for withholding the requested records is the exception under the FOIA relating to intra-agency decisional documents. This exception is intended to ensure that internal decision-making benefits from the free exchange of policy option "pros" and "cons" without fear that documentation of this give and take is not subject to FOIA disclosure. The documents we seek do not relate to policy decisions, but to scientific reports that are inherently factual in nature, and which, as a matter of public policy, should be released in an effort to encourage an open and scientific responsive dialogue between EPA and the public, particularly where a regulation has been promulgated that restricts the use of a chemical substance.

The *Sterling Drug* case,[2] applying the U.S. Supreme Court's decision in *EPA v. Mink*, 410 U.S. 87 (1972), to scientific reports prepared by the U.S. Food and Drug Administration (FDA), clearly distinguishes between those internal documents protected by the privilege and those "which are not a direct part of the deliberative process in the manner necessary to fall within the privilege." *The documents we seek are those prepared routinely by EPA scientists and do not depend on confidentiality for their forthright and thorough preparation*. Indeed, the fact that such reports might be disclosed may be "more likely to enhance the quality and thoroughness of the investigations."[3] We trust you will agree with our request and with the nature and type of data we seek.

We agree to pay reasonable search and reproduction costs for this information, up to $250. A quick response would be greatly appreciated.

If you have any questions concerning this request, please do not hesitate to contact me at (202) 434-4302 or clarkg@khlaw.com; or my colleague, Tom Berger, at (202) 434-4285 or berger@khlaw.com. Thank you in advance for your assistance.

Best regards,



Gregory A. Clark

4851-2076-6230, v. 1

[2] *Sterling Drug Inc. v. Harris*, 488 F.Supp. 1019, 1028 (S.D.N.Y. 1980).

[3] *Id.* at 1029.